

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

-----X	
WELL-MADE TOY M'FG. CORPORATION	:
a corporation of the State of New York	:
	:
Plaintiff,	:
	:
v.	:
	:
ORTEGA PUBLISHING PTY. LTD.	:
a limited company of Australia	:
	:
and	:
	:
IDENTITY DIRECT LIMITED	:
a limited company of New Zealand	:
	:
and	:
	:
SIGNATURE GIFTS INC.	:
a corporation of the State of New Jersey	:
	:
Defendants	:
-----X	

Civil Action No.:

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff for its Complaint against the Defendants respectfully alleges as follows:

THE PARTIES

1. The plaintiff, Well-Made Toys M'fg Corporation (hereinafter "Well Made") is a corporation of the State of New York having its principal place of business at 52-07 Flushing Avenue, 2nd Floor, Maspeth, NY 11378.

2. Upon information and belief, the defendant Ortega Publishing PTY. Ltd. is a limited company of Australia having its principal place of business at 1 Cassins Avenue, North Sydney NSW 2060, Australia and is doing business in at least New Zealand, Australia, the United Kingdom, the United States and Canada under the Identity Direct name; and has a business facility in Des Plaines, Illinois.

3. Upon information and belief, the defendant Identity Direct Limited is a limited company New Zealand having its principal place of business at KGA Limited, Level 4, 5-7 Kingdon Street, Newmarket, Auckland, 1023, New Zealand, and is believed to be wholly owned and controlled by Ortega Publishing PTY. Ltd. Upon information and belief, the defendant Identity Direct Limited is doing business in at least New Zealand, Australia, the United Kingdom, the United States and Canada under the Identity Direct name. In the United States, Identity Direct Limited is doing business as Identity Direct US in Elk Grove Village, Illinois.

4. Upon information and belief, the defendant Signature Gifts Inc. is a corporation of the State of New Jersey, having a principal place of business at 1592 Hart Street, Rahway, New Jersey.

5. Plaintiff Well Made is informed and believes and on that basis alleges, that Defendants Ortega Publishing PTY. Ltd., Identity Direct Limited and Signature Gifts Inc. have transacted business in the State of New York by offering for sale and selling within this Judicial District by the internet products infringing the rights of Well Made asserted herein.

JURISDICTION AND VENUE

6. The claims herein arise under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*, and jurisdiction is conferred by virtue of 28 U.S.C. §§ 1331(a) and 1338(a). The claims herein also arise under the international copyright laws including the Universal Copyright Convention and The Berne Convention, and the copyright laws of New Zealand as found in the Copyright Act 1994, the copyright laws of Australia as found in the Australian Copyright Act 1968 (as amended), the copyright laws of the United Kingdom as found in the Copyright, Designs and Patents Act 1988, as amended, and the copyright laws of Canada as found in the Copyright Act of Canada as amended,

including (R.S.C. 5.)

7. Venue is founded upon 28 U.S.C. § 1391(b) and (c).

**COUNT I: VIOLATION OF FEDERAL AND
INTERNATIONAL COPYRIGHT LAW**

8. Well Made hereby charges Defendants Ortega Publishing PTY. Ltd., Identity Direct Limited and Signature Gifts Inc. with copyright infringement in violation of The Copyright Act of 1976, the applicable international conventions including the Universal Copyright Convention and The Berne Convention, and the laws of New Zealand, Australia, the United Kingdom and Canada, including the Canadian Copyright Act (R.S.C., c. C-42).

9. Well Made is involved in the design and marketing of toys, including soft sculptural dolls. The designs created by Well Made are copyrighted under the laws of the United States, New Zealand, Australia, the United Kingdom and Canada, and under international law including the various copyright conventions and treaties the United States is a party to, as the Universal Copyright Convention and The Berne Convention.

10. The copyrighted designs of Well Made include the facial artwork and body sculpture of the *Sweetie Mine* doll, designed and created by Well Made. The copyright in the facial artwork and body sculpture of the *Sweetie Mine* doll is registered in the United States Copyright Office, United States Copyright Registration No. VA 770-506 as of April 26, 1996.

11. Attached hereto as Exhibit A is a true and correct copy of the Copyright Registration Certificate No. VA 770-506, and accompanying deposit materials.

12. The copyright for the *Sweetie Mine* doll created by Well Made is in full force and effect; and Well Made has complied with all requirements in submitting the application for copyright registration for the *Sweetie Mine* doll. Well Made has complied

with all requirements for the protection of its copyrighted design in the United States and internationally.

13. The plaintiff Well Made is informed and believes, and therefore avers, that subsequent to the introduction by Well Made into the market of its *Sweetie Mine* doll, and the obtaining of a certificate of copyright registration therefor in the United States, the Defendants Ortega Publishing PTY. Ltd., Identity Direct Limited and Signature Gifts Inc. have infringed upon the copyright of Well Made in its *Sweetie Mine* doll by producing, or causing to be produced in China, and importing into the United States as well as elsewhere including New Zealand, Australia, the United Kingdom and Canada and marketing therein soft sculpted dolls that have been copied directly from and are substantially similar in appearance to the copyrighted design of the copyrighted *Sweetie Mine* doll of Well Made.

14. The Defendant Signature Gifts Inc. markets within this judicial district and elsewhere by offering on its website <http://www.simplypersonalized.com/> at least one style of its Identity Direct personalized rag doll having substantially similar sculptural artwork as the *Sweetie Mine* doll of Well Made illustrated in Exhibit A, and are believed to have acquired such items from Defendants Ortega Publishing PTY. Ltd. or Identity Direct Limited.

15. Defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited have been offering various styles of their personalized rag doll having substantially similar sculptural artwork as the *Sweetie Mine* doll of Well Made illustrated in Exhibit A on such websites as <http://www.identitydirect.com/rag-doll.html> <http://www.identitydirect.com.au/rag-doll.html> <http://www.identitydirect.co.uk/rag-doll.html> <http://www.identitydirect.ca/rag-doll.html> <http://www.identitydirect.co.nz/rag-doll.html>

16. Attached hereto as Exhibit B is a true and correct copy of an image of the *Sweetie Mine* doll created and marketed by Well Made, alongside the comparable personalized rag doll that, upon information and belief, is being distributed by Defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited and Signature Gifts Inc. without permission or authorization of Well Made.

17. The infringing personalized rag doll that is being distributed by Defendants Ortega Publishing PTY. Ltd., Identity Direct Limited and Signature Gifts Inc. shown in Exhibit B was sold in this judicial district; and is being offered within this judicial district and throughout the world on the internet by Defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited.

18. The infringing personalized rag dolls marketed by the defendants, upon information and belief, has been copied directly from and are substantially similar to the copyrighted *Sweetie Mine* doll marketed by plaintiff Well Made; and more particularly, the distinctive artwork of the facial artwork and sculptural features of the infringing personalized rag dolls marketed by the defendants are essentially identical to the copyrighted *Sweetie Mine* doll of Well Made.

19. As a result of such actions as outlined in paragraphs 13-18 above, Defendants Ortega Publishing PTY. Ltd., Identity Direct Limited and Signature Gifts Inc. have each directly infringed Well Made's copyright in its *Sweetie Mine* doll.

20. And plaintiff Well Made is informed and believes, and therefore avers, that Defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited have had and continue to have knowledge of the copyright of Well Made in its *Sweetie Mine* doll; and yet continues its infringing activities in direct and knowing confrontation with the copyright laws both by individual sales and wholesale sales of the infringing personalized rag doll.

21. Defendant Ortega Publishing PTY. Ltd. and Defendant Identity Direct Limited continue to infringe the copyright of Well Made in its *Sweetie Mine* doll deliberately, wilfully and wantonly.

22. As a result of the actions, as outlined in paragraphs 12-21 above, Defendant Ortega Publishing PTY. Ltd. and Defendant Identity Direct Limited have willfully directly infringed and wilfully induced the infringement of others of Well Made's copyright, including Defendant Signature Gifts Inc., and retailers throughout the world who purchased the infringing personalized rag doll from Defendant Ortega Publishing PTY. Ltd. and Defendant Identity Direct, and Defendant Ortega Publishing PTY. Ltd. and Defendant Identity Direct knew such retailers would be offering the infringing products for sale so as to infringe the copyright of Well Made in its *Sweetie Mine* doll.

23. Plaintiff Well Made is informed and believes and, therefore avers that the aforesaid infringement and inducement thereof by the defendants of the copyrighted subject matter of Well Made was, and continues to be, with the knowledge that the sculpted designs of Well Made's products are copyrighted and that the defendants, in doing or authorizing such acts, have infringed the rights of Well Made under the copyright laws of the United States, Title 17 U.S.C. § 101 *et seq*, and the copyright laws of nations around the world where its infringing dolls have been sold.

24. The acts noted above of the defendants are unauthorized by Well Made or any of its agents, and such unlawful acts have enabled the defendants to trade unlawfully upon the creative efforts of the plaintiff Well Made. The defendants have, consequently, unjustly enriched themselves at the expense and to the damage and injury to the plaintiff Well Made.

25. Upon information and belief, unless enjoined by this court, the defendants will further impair if not destroy the value of the copyrights and the goodwill associated

therewith that are owned by the plaintiff Well Made.

26. Upon information and belief, Well Made avers that as a result of the foregoing, Well Made risks substantial loss of revenues and has sustain irreparable damage as the result of the willful and wrongful conduct of the defendants.

COUNT II: INDUCEMENT TO INFRINGE COPYRIGHT

27. As a second and complete ground for relief, plaintiff Well Made hereby charges the Defendant Ortega Publishing PTY. Ltd. and Defendant Identity Direct Limited with inducement of others to infringe valid international copyrights of plaintiff Well Made and hereby realleges the allegation of paragraphs 1 through 26 as though fully set forth herein.

28. By the activities noted above, the Defendant Ortega Publishing PTY. Ltd. and Defendant Identity Direct Limited have induced others around the world to infringe the international copyrights of plaintiff Well Made set forth herein by inducing others to manufacture and/or market products having unauthorized copies of the Well Made designs and, upon information and belief, such inducement was done willfully, knowingly, and maliciously.

29. As a result of the inducement by the Defendant Ortega Publishing PTY. Ltd. and Defendant Identity Direct Limited of others including manufacturers and retailers of products bearing the artwork infringing the copyrights of plaintiff Well Made as set forth herein, such others including manufactures and retailers have profited wrongfully and to the injury of plaintiff Well Made.

WHEREFORE, Plaintiff prays:

A. That the Defendants Defendant Ortega Publishing PTY. Ltd. and Identity Direct Limited and Signature Gifts Inc., and their agents, servants, employees and

attorneys as well as those persons in active concert or participation therewith be permanently enjoined and restrained from manufacturing, having manufactured, importing, offering for sale, selling, advertising or promoting or distributing in the United States any products incorporating the copyrighted subject matter or distinctive elements of the sculpted dolls of Well Made; and

B. further, that the Defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited and Signature Gifts Inc. be ordered:

(i) to deliver up for destruction all of the merchandise in their possession or control which incorporates any of the copyrighted designs of products marketed by Well Made, as well as all means for producing, advertising or promoting such infringing merchandise;

(ii) to make diligent efforts to recall all of the materials set forth in paragraph (B)(i) already distributed; and

(iii) to file with this court and serve on plaintiff ten (10) days after the date of the injunction a report in writing and under oath setting forth in detail the matter or form in which the Defendants Ortega Publishing PTY. Ltd., Identity Direct Limited and Signature Gifts Inc. have complied fully with the injunction;

C. that an accounting and judgment be rendered jointly and severally against the Defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited jointly and severally, and against Signature Gifts Inc. for:

(i) all profits received by the defendants from the sale of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b) and applicable international law;

(ii) all damages sustained by Well Made as a result of the copyright infringement of the defendants including compensation to Well Made fully for

all sales of products of Well Made that have been diverted or reduced as a result of the infringement by the defendants as provided by 17 U.S.C. § 504(b) and international law;

(iii) in the event Well Made so elects, statutory damages in the amount of \$150,000 as authorized by 17 U.S.C. § 504(c)(2) against each of the defendants for each copyright infringed and for each style of product infringing such copyright;

D. against defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited, an accounting and judgment be rendered for:

- (i) all profits received by the customers of defendant Ortega Publishing PTY. Ltd. and Identity Direct Limited for the induced infringement from the resale of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b) and international law;
- (ii) all profits received by the manufacturer of defendant Ortega Publishing PTY. Ltd. and Identity Direct Limited for the induced infringement from the manufacture of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b) and international law;
- (iii) in the event Well Made so elects, statutory damages in the amount of \$150,000 as authorized by 17 U.S.C. § 504(c)(2) against each defendant Ortega Publishing PTY. Ltd. and Identity Direct Limited, for the infringement induced for each of its customers;

E. that Well Made have and receive its costs in this action, including an award of its reasonable attorney's fees with interest from the date of the filing of this

complaint pursuant to 17 U.S.C. § 505;

F. that Well Made receive interest on its damages awards from the date of injury;

G. punitive damages for the willful and wonton infringement of the Defendants Ortega Publishing PTY. Ltd. and Identity Direct Limited; and

H. that the plaintiff be granted such other and further relief as the court deems just and appropriate.

Dated: New York, New York
May 6, 2015

Respectfully submitted,

/s/ Gerard F. Dunne
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Joseph A. Dunne (JD 0674)
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Suite 1125
New York, N.Y. 10003
212-645-2410
joe.dunne@dunnelaw.net
jerry.dunne@dunnelaw.net
Attorneys for Plaintiff, Well Made Mf'g Corporation

EXHIBIT A



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

VA 770-506



VAU

EFFECTIVE DATE OF REGISTRATION

APR 26 1996

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

NATURE OF THIS WORK ▼ See instructions

SWEETIE MINE

FACIAL ARTWORK AND BODY SCULPTURE

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION INFORMATION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

WELL-MADE TOY MFG CORP.

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of U.S.A.
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3-DIMENSIONAL SCULPTURE

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of country
OR { Citizen of
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3 DIMENSIONAL SCULPTURE

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
1995 Year

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month AUGUST Day 10 Year 1995
U.S.A. Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

WELL-MADE TOY MFG. CORP.
184-10 EAST JAMAICA AVE
HOLLIS, NY 11423

APPLICATION RECEIVED

APR 26 1996

ONE DEPOSIT RECEIVED

APR 26 1996

TWO DEPOSITS RECEIVED

DO NOT WRITE HERE OFFICE USE ONLY

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

MORE ON BACK ▶
• Complete spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions.
• Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

NOTE

Under the law, the "author" of a "work made for hire" is generally

030147316



See instructions before completing this space

EXAMINED BY re

FORM VA

CHECKED BY _____

☐ CORRESPONDENCE
Yes☐ DEPOSIT ACCOUNT
FUNDS USEDFOR
COPYRIGHT
OFFICE
USE
ONLY**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.****PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application submitted by this author as copyright claimant.☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.**a. Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼**b. Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼See instructions
before completing
this space**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼MS. SUSAN COOK c/o WELL-MADE TOY MFG. CORP.
184-10 EAST JAMAICA AVE
HOLLIS, NY 11423

Area Code & Telephone Number ▶

718-454-1326

Be sure to
give your
daytime phone
number**CERTIFICATION*** I, the undersigned, hereby certify that I am the

Check only one ▼

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of WELL-MADE TOY MFG. CORP.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made
by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

SUSAN COOK

date ▶

APRIL 14, 1996

Handwritten signature (X) ▼

Susan Cook**MAIL
CERTIFI-
CATE TO**Certificate
will be
mailed in
window
envelope

Name ▼	MS. SUSAN COOK c/o WELL-MADE TOY MFG. CORP.
Number/Street/ Apartment Number ▼	184-10 EAST JAMAICA AVE
City/State/Zip ▼	HOLLIS, NY 11423

Have you:

- Completed all necessary spaces?
- Signed your application in space 8?
- Enclosed check or money order for \$10 payable to Register of Copyrights?
- Enclosed your deposit material with the application and fee?

MAIL TO: Register of Copyrights,
Library of Congress, Washington,
D.C. 20559

* 17 U.S.C. § 506(e). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2 500.

U.S. GOVERNMENT PRINTING OFFICE: 1988-202-133 80,001

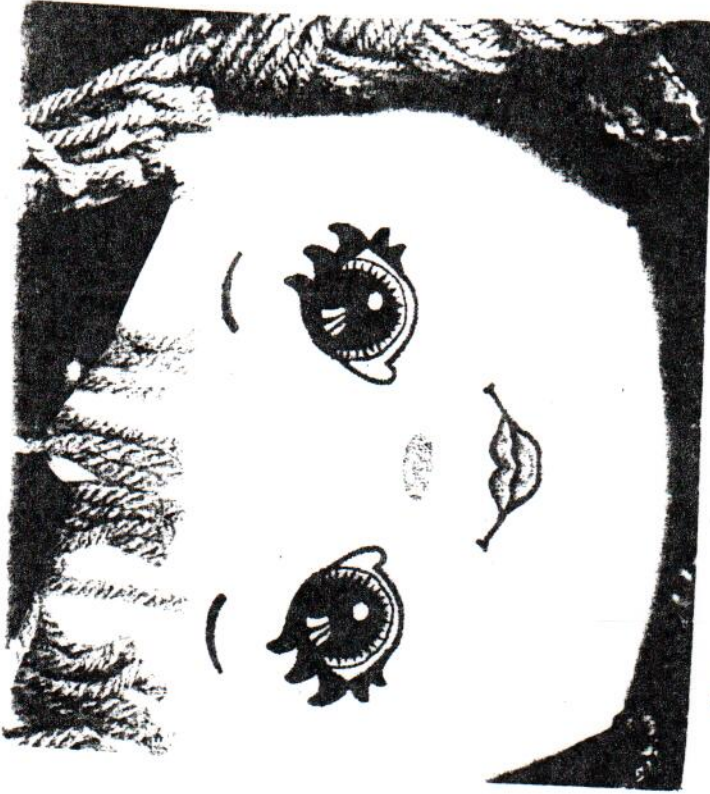
June 1988-100,000

"SWEETIE MINE"
F902, F1504, F1503, F1514,
F1570, F1572, F1584, F1590,
F1592, F1596, F1600, F1602,
F1612, F1614, F1616, F1624
F1706 F01706

* REDUCE LAYOUT
TO THIS
ACTUAL SIZE

PRINT COLOR: PINK

SEW-IN LABEL LAYOUT ↓



"SWEETIE MINE" FACE

Sweetie Mine™

COPYRIGHT © 1994 ⁹⁵

ALL NEW MATERIAL
POLYESTER
WELL - MADE
184 - 10

SKIN
MADE IN CHINA
PENN. REG #194
MASS LIC #0134 OHIO LIC #4193
FOR AGES 3 AND UP

F 1582

F 1514

F 1584

F 1570

F 1616

F 1572

F 1504

F 1503

F 902

F900

F1592.

F3066

BLUE OR
GREEN EYES

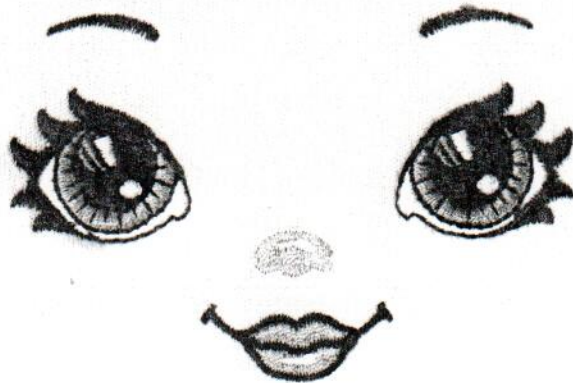




EXHIBIT B

via
www.identitydirect.com.au

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registered & copyright

